



# State of West Virginia *Board of Medicine*

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## MEMORANDUM

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
**ASHISH P. SHETH, MD**  
VICE PRESIDENT

**MARK A. SPANGLER, MA**  
EXECUTIVE DIRECTOR

**TO: The Honorable Mac Warner**  
**Secretary of State**

**FROM: Mark A. Spangler, Executive Director**  
**West Virginia Board of Medicine** *mas*

**DATE: March 26, 2020**

**RE: Temporary Suspension of Certain Provisions of 11 CSR 3**

The West Virginia Board of Medicine is the state agency charged with protecting the health and safety of the public through licensure, regulation and oversight of medical doctors (MDs), podiatric physicians (DPMs), and collaborating physician assistants (PAs).

On March 16, 2020, the Honorable Governor of the State of West Virginia, Jim Justice, declared a State of Emergency to address the COVID-19 pandemic and delegated "to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency."

On March 19, 2020, Governor Justice issued Executive Order 7-20, authorizing the suspension of certain regulations codified in the West Virginia Medical Practice Act, W. Va. Code § 30-3-1 *et seq.* and the West Virginia Physician Assistants Act, W. Va. Code § 30-3E-1 *et seq.* to suspend certain statutory provisions relative to the regulation of physician and physician assistant practice in West Virginia. On March 23, 2020, by way of Executive Order 10-20, Governor Justice amended the provisions of Executive Order 7-20, relating to the suspension of certain regulations related to physician practice in West Virginia.

In accord with the March 16, 2020 Emergency Proclamation and Executive Orders 7-20 and 10-20, the Board of Medicine respectfully requests that the following provisions of W. Va. Code R. § 11-3-1 *et seq.* be temporarily suspended:

Rule Section	Temporary Suspension
11-3-8 (suspend strikethrough language only)	All records of open proceedings of the Board are public records <del>and shall be available to the public during the usual and customary business hours of the Board.</del> <sup>1</sup>
11-3-10.16 (suspend strikethrough language only)	10.16. The Board may take summary action pending a hearing, if the health, safety or welfare of the public necessitates such summary action. The Board shall provide a hearing on the necessity for the summary action <del>within fifteen (15) days after the summary action. The Board shall render its decision within five (5) days of the conclusion of a hearing under this section.</del>
11-3-11.2 (suspend strikethrough language only)	11.2. When the President or his or her authorized designee is presented with a demand for a hearing as described in Subsection 11.1 of this section, he or she shall schedule a hearing <del>within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement.</del> However, if the President or his or her designee shall determine that the hearing demanded would either involve an exercise of authority in excess of that available to him or her under law, or would serve no useful purpose, the President shall, <del>within forty-five (45) days of receipt of such demand,</del> enter an order refusing to grant the hearing as requested, incorporating therein the reason(s) for such refusal. Appeal may be taken from such order as provided in W. Va. Code §29A-5-4.
11-3-18.1 (suspend strikethrough language only)	18.1. Any final order entered by the President or his or her designee following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of W. Va. Code §29A-5-3. <del>Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law.</del>
11-3-18.2 (suspend strikethrough language only)	18.2. The findings of fact and conclusions of law must be approved by a majority of the Board either by a poll or vote at a regular or special meeting, before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the respondent <del>within five (5) days after entry by the Board,</del> in person or by means of registered or certified mail sent to the party and his or her counsel.

<sup>1</sup> The Board is closed to the public during the State of Emergency, but otherwise continues to respond to public records requests.

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In keeping with the suspension of W. Va. Code § 30-1-5(c) in Executive Order 7-20, the Board seeks to provide greater timing flexibility to support rescheduled meetings, telephonic meetings, and the need to circulate Orders for signature prior to service. These temporary rule suspensions will also facilitate protection of the public by extending hearing deadlines as necessary during the State of Emergency.

Thank you for your time and attention to this request. If granted, the Board of Medicine further requests that the identified rule provisions be suspended until the State of Emergency is lifted.